IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1139 OF 2004

Umarani Durgaprasad Poddar, .. Petitioner.

Vs

Ajay Sohanlal Jhuria .. Respondent.

Mr A.K.Abhyankar with Mr Lalit Jain, for the petitioner.

CORAM : D.B.BHOSALE,J.

DATE : 19th October, 2004.

PC:

1. Heard the learned counsel for the petitioner.

2. This petition challenges the two orders dated 22.7.2003 and 6.10.2003 passed by the Small Causes Court in different interim notices taken out by the parties in the proceedings. The first order dated 22.7.2003 was passed in two interim notice nos. 106 of 2002 and 104/2002 taken out by the respondent-plaintiff in RAE & R Suit No.195/322 of 2001. The interim notice no.104 of 2002 was taken out seeking action for committing perjury against the petitioner and interim notice no.106 of 2002 was taken out for the action under the provisions of the Contempt of Courts Act. Both the notices were ordered to be heard and decided along with the suit vide order dated 22.7.2003. The relevant observations in the order read thus:

"It is, thus, clear that to consider the reliefs

in both the notices convincing evidence is required to be led by the parties or more particularly the plaintiff. It is, therefore, the plaintiff has decided to lead his oral evidence in both the notices at the stage of hearing of the suit, instead of getting both the notices tried independently by leading his oral evidence. Thus, the objection raised by the representative advocate on behalf of opponent cannot be considered under the law. Accordingly, both the notices viz. contempt Notice No.106 of 2002 and 104 of 2002 are hereby ordered to be heard and decided along with the suit at the final hearing of the suit."

3. By order dated 6.10.03, the three interim notices taken out by the petitioner have been disposed of by the common Judgment. The interim notice no.2394 of 2003 taken out by the petitioner, was for dismissal of interim notice no. 104/02 taken out by the respondent-plaintiff and interim notice no.2395 of 2003 was taken out for dismissal of interim notice no.106 of 2002. In so far as interim notice no.4042 of 03 is concerned, that was taken out by the petitioner for action under under section 15 of the Contempt of Courts Act. That interim notice was disposed of by the learned

Judge of the Small causes Court by recording cogent reasons in the order. As far as first two interim notices bearing no. 2394 of 2003 and 2395 of 2003 are concerned, in view of the order dated 22.7.2003 passed in interim notice nos.104/02 and 106/02, in my opinion, they were rightly dismissed by the learned Judge of the Small Causes Court. For the reasons recorded in paragraph 9 of the order, no case for exercising jurisdiction under Article 227 of the Constitution of India is made out.

4. In so far as interim notice no.4042 of 2003 is concerned, in my opinion, that was also rightly rejected by the learned Judge of the Small Causes Court by recording the following reasons:

> "As far as the relief in Int. Notice No.4042 of 2003 is concerned, allegations of the applicant in support of the notices in her affidavit Notice 4818 of 2001 cannot be considered as conclusive proof without any evidence before the Court. Thus, considering the relief in this notice also been amount to jump to the conclusion without any evidence before the court prima facie that respondent has committed the contempt of court as alleged by the applicant in the affidavit in

support of notice. This notice has taken out by the applicant is at a prematured stage. It appears that this notice is also taken out as a counter blast to the notices taken out by the plaintiff bearing Int. Notice No. 104 of 2002 and 106 of 2002. At this stage I do not find any evidence to make any reference to the Hon'ble High Court against the plaintiff for the contempt of court as prayed for by the applicant in this notice. Thus, this notice is liable to be dismissed under the law. Accordingly I pass the following order."

5. Keeping the reasons recorded by the learned Judge of the Small causes Court while rejecting the interim notice no.4042 of 2003 in view, and considering the overall facts and circumstances of the case, this petition under Article 227 deserves to be rejected. Order accordingly.

(D.B.BHOSALE, J.)